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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,553	01/13/2004	James G. Shepard	PD-02W173	2675
<div>7590 01/18/2008</div> <div>John E. Gunther Raytheon Company P.O. Box 902 (E1/E150) El Segundo, CA 90245-0902</div> <div>EXAMINER BOWERS, NATHAN ANDREW</div> <div>ART UNIT PAPER NUMBER</div> <div>1797</div> <div>MAIL DATE DELIVERY MODE</div> <div>01/18/2008 PAPER</div>				

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/756,553

Applicant(s)

SHEPARD ET AL.

Examiner

Nathan A. Bowers

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 11-14 and 19-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 11-14 and 19-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 31 October 2007 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1) Claims 1-4, 11-14, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Silcott (US 20030098422) in view of Spremo (US 6930775).

With respect to claims 1 and 3, Silcott discloses a bioagent detecting system comprising a laser source (Figure 3:106) for generating ultraviolet light to fluoresce an aromatic protein. This is disclosed in paragraphs [0044]-[0051]. Furthermore, a detector (Figure 4:412) and a system controller (Figure 16:1604) are provided for sensing induced fluorescence from the protein and correlating the detected fluorescence levels with atmospheric absorption levels to determine if an ambient threshold is exceeded by a predetermined amount. This is disclosed in paragraphs [0085]-[0095]. Silcott discloses a plurality of output couplers (Figure 4:414) in the form of lenses coupled to the light source to direct light to the detection site. Silcott, however, does not expressly state that a blaze grating is provided to separate UV light provided by the laser source into first and second wavelengths having a separation therebetween of no more than five nanometers.

Spremo discloses a biological detection system in which a light source and a detector are provided. In column 1, line 26 to column 2, line 25 and in column 4, lines 33-67, Spremo indicates that a plurality of blaze gratings are provided to separate wavelengths from the light source into first and second wavelengths each capable of being directed onto a detection site.

Column 11, lines 5-16 state that wavelength separation between the pair is 1-20 nm, or less if desired.

Silcott and Spremo are analogous art because they are from the same field of endeavor regarding the use of a light source and a photodetector to detect fluorescence in a biological analyte.

At the time of the invention, it would have been obvious to include the blaze grating disclosed by Spremo in the optical detection system proposed by Silcott. In column 1, lines 12-35, Spremo indicates that it is advantageous in detection systems to divide light derived from the light source into separate beams comprising distinct wavelengths in order to better study certain wavelength effects. In the system of Silcott, this would have allowed one to ensure that detected fluorescence is derived from the presence of an analyte, rather than from background fluorescence produced from interaction with wavelengths that are not specific to the analyte.

With respect to claims 2, 19 and 20, Silcott and Spremo disclose the apparatus set forth in claim 5 as set forth in the 35 U.S.C. 103 rejection above. In addition, Silcott states in paragraph [0071] that the detector comprises avalanche photo diodes to detect fluorescence levels. Silcott states in paragraphs [0058] and [0059] that the UV laser light is collimated by lenses. The collimator intrinsically could collimate the laser light for direction toward a suspect cloud in the atmosphere.

With respect to claims 4, 11 and 12, Sil Silcott and Spremo disclose the apparatus set forth in claim 1 as set forth in the 35 U.S.C. 103 rejection above. Furthermore, Silcott teaches in

Table 2 and paragraphs [0051]-[0054] that tryptophan fluoresces at 320-350 nm, and therefore should be irradiated with UV light of 220, 280 and 288 nm. Silcott states in paragraph [0085] that anthrax is detected using the disclosed invention. Anthrax has an aromatic-protein shell comprising tryptophan, and therefore can be quantified by detecting tryptophan fluorescence.

With respect to claims 13 and 14, Silcott and Spremo disclose the apparatus set forth in claim 5 as set forth in the 35 U.S.C. 103 rejection above. In addition, Silcott teaches in paragraphs [0085]-[0095] that the system controller receives a detection signal from the detector that is proportional to the fluorescence level, and that a notification signal is generated when the detection signal indicates that a threshold is exceeded. The threshold is based on a predetermined value that corresponds to a standard condition.

2) Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Silcott (US 20030098422) in view of Spremo (US 6930775) as applied to claim 1, and further in view of Dai (US 20030230728).

Silcott and Spremo disclose the system set forth in claim 1 as set forth in the 35 U.S.C. 103 rejection above, however do not expressly indicate that the laser source comprises an array of laser diodes. Although Spremo indicates in column 3, lines 8-11 that the use of multiple light sources is known in the art, Spremo does not state that a laser diode array is used.

Dai discloses a bioagent detecting system and method comprising a first array (Figure 3:104a) of light emitting diodes (LED) for generating a first ultraviolet wavelength and a second array (Figure 13:104b) of LEDs for generating a second ultraviolet wavelength. This is

disclosed in paragraphs [0008]-[0015] and [0032]. Paragraphs [0032]-[0037] indicate that the individual diodes on each array may be configured to emit light at different UV wavelengths, or may be divided into separate groups that each generate light at more than one UV wavelength. A third array (Figure 3:104c) may be used to generate light at a plurality of different wavelengths. It is believed that the diode arrays disclosed by Dai are capable of generating a pair of discrete UV wavelengths in such a way that each array generates light at a separate and single wavelength. Furthermore, it is believed that Dai's invention is capable of illuminating and inducing fluorescence in a single sample using the first and second wavelengths. These limitations merely represent intended uses of the device (See MPEP 2114).

At the time of the invention, it would have been obvious to substitute the single laser diode disclosed by Silcott with a plurality of laser diodes arranged across multiple arrays. This would allow one the ability to simultaneously and sequentially irradiate a biological sample with UV light at a plurality of different wavelength. In paragraph [0020], Dai states that this is advantageous because it allows one to easily detect fluorescence at a variety of excitation wavelengths in a quick and efficient manner. By incorporating a plurality of individually controlled laser diodes, Silcott's device would be capable of simultaneously analyzing a sample for the presence of a plurality of hazardous bioagents that fluoresce at different wavelengths.

3) Claims 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Silcott (US 20030098422) in view of Spremo (US 6930775) as applied to claims 15 and 20, and further in view of Petrich (US 20030160182).

Silcott and Spremo disclose the apparatus set forth in claims 15 and 20 as set forth in the 35 U.S.C. 103 rejections above, however do not expressly disclose that the apparatus comprises a range finder, or that the apparatus is handheld.

Petrich discloses an apparatus that comprises a plurality of light sources (Figure 4:110) that emit ultraviolet light in order to cause a hazardous bioagents upon a sample (Figure 1:140) to fluoresce. This resulting fluorescence is detected by a sensor (Figure 4:130) which relays information to a processor (Figure 4:117). This is disclosed in paragraphs [0015] and [0032]-[0038]. Petrich teaches that the device is handheld and is adapted to receive batteries. Paragraph [0039] teaches that the apparatus further includes a proximity sensor (Figure 4:122) that is capable of determining the distance to a biological sample.

Silcott, Spremo and Petrich are analogous art because they are from the same field of endeavor regarding the use of fluorescence to determine the presence of undesirable biological compounds.

At the time of the invention, it would have been obvious to construct the apparatus proposed by Silcott and Spremo as a handheld device. Petrich teaches in paragraphs [0003] and [0011] that handheld devices are lightweight and portable, and are useful because they can be easily transported to any place that requires the detection of a biologically dangerous compounds. This type of portable device is necessary to analyze a suspect cloud that may materialize anywhere and at any time. Furthermore, it would have been obvious to provide the invention with a range finder. Petrich teaches in paragraph [0039] that a range finder is beneficial because it can be used to restrict UV radiation if the object to be analyzed is determined to not be within the light path or not be within a certain distance from the light

source. This is advantageous because it provides increased safety to the user by reducing any unintended and unnecessary exposure to the light source.

4) Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Silcott (US 20030098422) in view of Spremo (US 6930775) as applied to claim 5, and further in view of Reichert (US 6911344) or Giebeler (6313471).

Silcott and Spremo disclose the apparatus set forth in claim 5 as set forth in the 35 U.S.C. 103 rejection above. Silcott discloses tunable fiber lasers, however do not disclose that a blaze grating is used to receive multiple wavelength light from the array of diodes and direct a selected wavelength through an output coupler.

Reichert and Giebeler disclose apparatuses for facilitating fluorescence detection of biological compounds. Reichert states in column 2, line 64 to column 3, line 41 that blaze gratings and output couplers are known in the art as effective ways to select a desired wavelength. Giebeler discloses the use of blaze gratings in column 6, lines 9-24 and in column 8, lines 29-45.

Silcott, Spremo, Reichert and Giebeler are analogous art because they are from the same field of endeavor regarding fluorescent detection procedures.

At the time of the invention, it would have been obvious to add a blaze grating and an output coupler to the apparatus disclosed by Silcott and Spremo. Blaze gratings and output couplers are well known in the art and are effective mechanisms to direct light of a desired wavelength to a detector. Multi-wavelength light derived from the laser disclosed by Silcott

could easily be manipulated using a blaze grating and an output coupler based on a control signal from a system controller.

Response to Arguments

Applicant's arguments filed 31 October 2007 with respect to the 35 U.S.C. 103 rejections involving the combination of Silcott with Spremo have been fully considered but they are not persuasive.

Applicant's principle arguments are

(a) The Examiner's rationale to separate wavelengths in Silcott is to remove wavelengths associated with background fluorescence produced from interaction with wavelengths that are not specific to the analyte to ensure that the detected fluorescence is derived from the presence of the analyte. Under this rationale, the separated-out wavelengths are not used to fluoresce the analyte nor used to determine the atmospheric level. This directly contradicts Applicant's claims which recite that two wavelengths are provided to fluoresce one aromatic protein, and that the detection of both the fluorescence levels of both wavelengths is used to determine the atmospheric level of the one aromatic protein.

In response to Applicant's arguments, please consider the following comments.

The Spremo reference only teaches that excitation light is divided by a blaze grating to produce paired wavelengths that are separated by 1-20 nm. The Spremo reference is not relied on for teachings involving the removal of emission light associated with background fluorescence. It would have been obvious to use the blaze grating of Spremo in conjunction with the laser light source of Silcott to produce closely paired wavelengths capable of fluorescing an

analyte. The rejection above does not suggest that it would have been obvious to restrict emission light to the detect, but rather states that it would have been obvious to affect the excitation light using a blaze grating as it travels toward the sample.

The current claim set is problematic for the same reasons regarding intended use that have been stated in prior Office Actions. Applicant's amendments stating that the UV wavelengths "are both selected to fluoresce the sing aromatic protein," do not serve to add any structural limitations to the apparatus claim. As it currently stands, the structural features in the claim are a laser source, a blaze grating, an output coupler, a detector and a controller. The Silcott reference discloses all of these structural features except for the blaze grating, which is in turn disclosed by Spremo. The intended use claims, while helpful in describing the nature of the invention, do not serve to patentably distinguish the claimed apparatus from the prior art.

In response to applicant's argument that Silcott and Spremo do not disclose that first and second wavelengths are used to fluoresce a single aromatic protein, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Conclusion

This is a non-final rejection.

No claims are allowed.

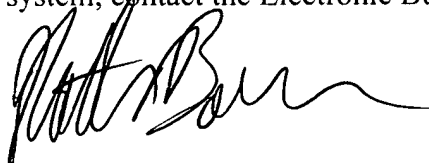
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan A. Bowers whose telephone number is (571) 272-8613. The examiner can normally be reached on Monday-Friday 8 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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